

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON POST E.C.S.

DOCKET NO. C99-1

MOTION OF UNITED PARCEL SERVICE
FOR LEAVE TO CONDUCT DISCOVERY
(March 17, 1999)

United Parcel Service ("UPS") hereby moves for leave to conduct discovery on the issues raised by the Motion of the United States Postal Service ("Postal Service") to Dismiss USP's Complaint, on the grounds set forth herein.

On March 15, 1999, the United States Postal Service filed a Response to *Answers of the Coalition Against Unfair USPS Competition and United Parcel Service in Response to Motion of the United States Postal Service for Reconsideration*, or for Alternative Relief. In this Response, the Postal Service states that "it is not necessary for the Commission to require the production of agreements responsive to question 4(a) posed in Order No. 1229 in order to resolve the Postal Service's pending motion to dismiss."

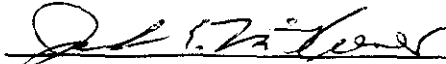
The Postal Service correctly asserts that UPS believes it is not necessary for the agreements to be produced in order to *deny* the Postal Service's Motion to Dismiss UPS's Complaint. However, as set forth in UPS's Answer in Response to Motion of the Postal Service for Reconsideration, or for Alternative Relief (at page 2), should the Commission not agree that the information available to it sufficiently demonstrates the postal nature of domestic Post E.C.S. transactions, UPS seeks leave to conduct discovery on the issues raised by the Postal Service's Motion to Dismiss UPS's Complaint.

At pages 13-14 of UPS's Answer to the Postal Service's Motion to Dismiss, UPS originally requested leave to conduct discovery on the factual issues raised by the Postal Service's Motion to Dismiss, should the Commission deem it necessary to resolve those factual issues in order to dispose of the Postal Service's Motion to Dismiss. We did not file a separate motion to that effect. We are filing the instant motion as a protective matter, in case the Commission believes a formal motion seeking discovery is necessary. UPS submits that whenever a motion to dismiss raises relevant and material factual issues, discovery is required.

WHEREFORE, United Parcel Service respectfully requests that the Commission grant leave for United Parcel Service to conduct discovery relevant to the factual issues raised by the Postal Service's Motion to Dismiss, should the Commission deem those

issues to be relevant and material to the question whether Post E.C.S. is a domestic postal service.

Respectfully submitted,


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Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.


John E. McKeever

Dated: March 17, 1999
Philadelphia, PA